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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186891

DATE: November 14, 1977

MATTER OF: IML Freight, Inc.

DIGEST:

1. Section 20(11) of Interstate Commerce Act provides among other things that claims for loss or damage to property must be filed with receiving or delivering carrier.
2. Carrier may employ agent to perform transportation services for it.
3. Whether or not an agency has been created is ordinarily question of fact as determined by relations and intentions of parties; facts in this case indicate that pickup carrier acted as agent of claimant carrier when it made pickup at Air Force base.

IML Freight, Inc. (IML), requests a review of a proposed debt collection action of the Department of the Air Force, Headquarters Air Force Accounting and Finance Center, Denver, Colorado. We have been advised by the Department of the Air Force that setoff action has been taken against IML and that monies have been deducted from its account. Therefore, we will consider IML's request as a claim against the United States. 31 U.S.C. 71 (1970).

The record shows that a shipment of aircraft parts was picked up by North Penn Transfer, Inc. (North Penn), on May 23, 1975, at McGuire Air Force Base, New Jersey, on Government bill of lading (GBL) M-0059665, consigned to Peterson Air Force Base, Colorado Springs, Colorado. North Penn turned the shipment over to IML, and in turn IML gave the shipment to Graves Truck Line, Inc. (Graves), for delivery. Graves certified that the shipment was delivered on June 5, 1975, and was paid freight charges of \$51.41. However, the shipment was not delivered and the Air Force filed a claim with IML for \$2,950.41, representing the value of the lost aircraft parts, plus unearned freight charges.

IML does not dispute the fact of carrier liability. However, IML alleges that the Air Force should have filed a claim with North Penn because it, and not IML, was the origin carrier, that IML was the intermediate carrier, and that under section 20(11) of the Interstate Commerce Act, as amended, 49 U.S.C. 20(11) (1970), claims for loss or damage must be filed with the origin or destination carrier unless

the intermediate carrier is fully responsible for the claim. Further, IML states that North Penn was not acting as its agent and accepted the shipment just as any other interstate carrier.

It is true as IML states that section 20(11) of the Interstate Commerce Act provides, among other things, that a claim must be filed against the receiving or delivering carrier. Arnold J. Rodin, Inc. v. Atchison, Topeka & Santa Fe R.R., 477 F.2d 682 (5th Cir. 1973); Minneapolis, St. Paul & Sault Ste Marie R.R. v. Metal-Matic, Inc., 323 F.2d 903 (8th Cir. 1963). However, it is also well established that a carrier may employ an agent to perform transportation services for it. United States v. Fruit Growers Express Co., 279 U.S. 363 (1929); Terminal Allowance at Minnesota Transfer, 268 I.C.C. 5, 12 (1946).


The question of whether or not an agency has been created is ordinarily a question of fact and can be determined by the relations and intentions of the parties. 3 Am. Jur. 2d Agency sec. 21 (1962). And the facts in this case indicate that North Penn acted as an agent of IML when it made the pickup at McGuire Air Force Base.

The GBL constitutes the contract of shipment and was issued by IML under the provisions of section 20(11) of the Interstate Commerce Act. The GBL shows "IML Freight Inc" under the heading of "Transportation Company," and the same information appears at the bottom of the GBL, followed by a block entitled "Signature of Agent," which is signed for by North Penn. The GBL also contains the name of Graves Truck Line, Inc.; this information was added later by Graves when they billed for the transportation charges. Thus, the bill of lading on its face indicates that IML was the initial carrier and that North Penn must have been acting as its agent. See United States v. Mississippi Valley Barge Line Co., 285 F.2d 381 (8th Cir. 1960).

Additional information in the file also indicates that North Penn acted as IML's agent. IML stated in a letter of December 8, 1976, to a Freight Supervisor at McGuire Air Force Base that: "Please be advised that North Penn Transfer, Inc. in Vincentown, New Jersey is the designated pick-up carrier for IML Freight at McGuire AFB." IML states that this information was furnished because it does not serve the base direct. However, IML can serve the base direct as evidenced by Rocky Mountain Motor Tariff Bureau Tariff ICC RMB 118-B, which shows that IML can serve all points in the state of New Jersey. Thus, apparently for operational reasons IML has chosen not to serve McGuire AFB and has instead chosen North Penn as its agent for pickup. Cf. Riss & Company v. United States, 213 F. Supp. 791 (W.D. Mo. 1962).

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Accordingly, the claim of IML for \$2,980.41 is disallowed.


Deputy Comptroller General
of the United States